

BILL ANALYSIS

Senate Research Center

S.B. 791
By: Nelson
Health & Human Services
6/26/2001
Enrolled

DIGEST AND PURPOSE

In 1997, the 76th Legislature passed H.B. 2085 which called for the Texas Department of Health (TDH) to perform a comprehensive evaluation of its regulatory programs and to identify problem areas and recommend solutions. One of the findings of the regulatory review indicates that enforcement sanctions are inadequate in some of the professional licensing programs. As proposed, S.B. 791 amends several sections of the Occupations Code to grant these licensing programs the authority to issue emergency suspension of a license to practice, to assess administrative penalties to strengthen regulatory efforts, and to include civil and criminal penalties to further sanction individuals that are out of compliance. These sanctioning tools ensure standardization and consistency of enforcement measures for licensing programs housed within TDH.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 203I, Occupations Code, by adding Section 203.405, as follows:

Sec. 203.405. EMERGENCY SUSPENSION. Requires the midwifery board (board) or a three-member committee of board members designated by the board to temporarily suspend the letter of documentation of a documented midwife if the board or committee determines from the evidence or information presented to it that continued practice by the documented midwife would constitute a continuing and imminent threat to the public welfare. Authorizes a letter of documentation to be suspended under this section without notice or hearing under certain circumstances. Requires the State Office of Administrative Hearings (SOAH) to hold a preliminary hearing not later than the 14th day after the date of the temporary suspension to determine if there is a probable cause to believe that a continuing and imminent threat to the public welfare still exists. Requires a final hearing on the matter to be held not later than the 61st day after the date of the temporary suspension.

SECTION 2. Amends Chapter 352F, Occupations Code, by adding Section 352.254, as follows:

Sec. 352.254. EMERGENCY SUSPENSION. Requires the Texas Department of Health (TDH) to temporarily suspend the certificate of registration of a certificate holder if TDH determines from evidence or information presented to it that continued practice by the certificate holder would constitute a continuing and imminent threat to the public welfare. Authorizes the certificate of registration to be suspended under this section without notice or hearing under certain circumstances. Requires SOAH to hold a preliminary hearing not later than the 14th day after the date of the temporary suspension to determine if there is probable cause to believe that a continuing and imminent threat to the public welfare still exists. Requires a final hearing on the matter to be held not later than the 61st day after the date of the temporary suspension.

SECTION 3. Amends Chapter 353E, Occupations Code, by adding Section 353.2025, as follows:

Sec. 353.2025. EMERGENCY SUSPENSION. Requires the Texas Department of Health (TDH) to temporarily suspend the permit of a permit holder if TDH determines from evidence or information presented to it that continued practice by the permit holder would

constitute a continuing and imminent threat to the public welfare. Authorizes the permit to be suspended under this section without notice or hearing under certain circumstances. Requires SOAH to hold a preliminary hearing not later than the 14th day after the date of the temporary suspension to determine if there is probable cause to believe that a continuing and imminent threat to the public welfare still exists. Requires a final hearing on the matter to be held not later than the 61st day after the date of the temporary suspension.

SECTION 4. Amends Chapter 401J, Occupations Code, by adding Section 401.460, as follows:

Sec. 401.460. EMERGENCY SUSPENSION. Requires the State Board of Examiners for Speech-Pathology and Audiology (board) or a three-member committee of board members designated by the board to temporarily suspend the license of a license holder if the board or committee determines from evidence or information presented to it that continued practice by the license holder would constitute a continuing and imminent threat to the public welfare. Authorizes the license to be suspended under this section without notice or hearing under certain circumstances. Requires SOAH to hold a preliminary hearing not later than the 14th day after the date of the temporary suspension to determine if there is probable cause to believe that a continuing and imminent threat to the public welfare still exists. Requires a final hearing on the matter to be held not later than the 61st day after the date of the temporary suspension.

SECTION 5. Amends Chapter 401, Occupations Code, by adding Subchapter L, as follows:

SUBCHAPTER L. ADMINISTRATIVE PENALTY

Sec. 401.551. IMPOSITION OF ADMINISTRATIVE PENALTY. Authorizes the State Board of Examiners for Speech-Pathology and Audiology (board) to impose an administrative penalty on a person licensed under this chapter who violates this chapter or a rule or order adopted under this chapter.

Sec. 401.552. AMOUNT OF ADMINISTRATIVE PENALTY. Prohibits the amount of the administrative penalty from being less than \$50 or more than \$500 for each violation. Provides that each day a violation continues or occurs is a separate violation for the purpose of imposing a penalty. Requires the amount to be based on certain factors.

Sec. 401.553. REPORT AND NOTICE OF VIOLATION AND PENALTY. Authorizes the commissioner of public health (commissioner), on determination that a violation has occurred, to issue a report to the board stating certain information. Requires the commissioner, within 14 days after the date the report is issued, to give written notice of the report to the person. Provides that the notice must include certain information.

Sec. 401.554. PENALTY TO BE PAID OR HEARING REQUESTED. Authorizes the person, within 10 days after the person receives the notice, to take certain actions. Requires the board by order, if the person accepts the determination and recommended penalty of the commissioner, to approve the determination and impose the recommended penalty.

Sec. 401.555. HEARING. Requires the commissioner, if the person requests a hearing or fails to respond in a timely manner to the notice, to set a hearing and give written notice of the hearing to the person. Requires an administrative law judge of SOAH to hold the hearing. Requires the administrative law judge to make findings of fact and conclusions of law and promptly issue to the board a proposal for a decision about the occurrence of the violation and the amount of a proposed administrative penalty.

Sec. 401.556. DECISION BY BOARD. Authorizes the board by order, based on the findings of fact, conclusions of law, and proposal for decision, to determine that a violation occurred and impose an administrative penalty or that a violation did not occur. Requires the notice of the board's order given to the person to include a statement of the right of the person to judicial review of the order.

Sec. 401.557. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. Requires the person, within 30 days after the date the board's order becomes final, to take certain actions.

Authorizes a person who files a petition for judicial review, within this 30-day period, to take certain actions. Authorizes the commissioner, if the commissioner receives a copy of a certain affidavit under this section, to file a contest to the affidavit with the court within five days after the date the copy is received. Requires the court to hold a hearing on the facts alleged in the affidavit as soon as practicable and to stay the enforcement of the penalty on finding that the alleged facts are true. Provides that the person who files the affidavit has the burden of proving that the person is financially unable to pay the penalty and to give a supersedeas bond.

Sec. 401.558. **COLLECTION OF PENALTY.** Authorizes the administrative penalty to be collected if the person does not pay the penalty and the enforcement of the penalty is not stayed. Authorizes the attorney general to sue to collect the penalty.

Sec. 401.559. **DETERMINATION BY COURT.** Authorizes the court, if the court sustains the determination that a violation occurred, to uphold or reduce the amount of the administrative penalty and order the person to pay the full or reduced amount of the penalty. Requires the court, if the court does not sustain the finding that a violation occurred, to order that the penalty is not owed.

Sec. 401.560. **REMITTANCE OF PENALTY AND INTEREST.** Requires the court, if the person paid the administrative penalty and if the amount of the penalty is reduced or the penalty is not upheld by the court, to order, when the court's judgment becomes final, that the appropriate amount plus accrued interest be remitted to the person. Sets forth the rate at which interest accrues. Requires the interest to be paid for a certain period. Requires the court, if the person gave a supersedeas bond and the penalty is not upheld in court, to order, when the court's judgment becomes final, the release of the bond. Requires the court, if the person gave a supersedeas bond and the amount of the penalty is reduced, to order the release of the bond after the person pays the reduced amount.

Sec. 401.561. **ADMINISTRATIVE PROCEDURE.** Provides that a proceeding under this subchapter is a contested case under Chapter 2001, Government Code.

SECTION 6. Amends Chapter 402K, Occupations Code, by adding Section 402.504, as follows:

Sec. 402.504. **EMERGENCY SUSPENSION.** Requires the Texas Board of Health (board) or a three-member committee of board members designated by the board to temporarily suspend the license or permit of a license or permit holder if the board or committee determines from evidence or information presented to it that continued practice by the license or permit holder would constitute a continuing and imminent threat to the public welfare. Authorizes the license or permit to be suspended under this section without notice or hearing under certain circumstances. Requires SOAH to hold a preliminary hearing not later than the 14th day after the date of the temporary suspension to determine if there is probable cause to believe that a continuing and imminent threat to the public welfare still exists. Requires a final hearing on the matter to be held not later than the 61st day after the date of the temporary suspension.

SECTION 7. Amends Chapter 402L, Occupations Code, by adding Section 402.553, as follows:

Sec. 402.553. **CIVIL PENALTY.** Provides that a person who violates this chapter or a rule or order adopted by the Texas Board of Health (board) under this chapter is liable for a civil penalty not to exceed \$1,000 a day. Requires the attorney general, at the request of the board or the Texas Department of Health to bring action to recover a civil penalty authorized under this section.

SECTION 8. Amends Chapter 451F, Occupations Code, by adding Section 451.255, as follows:

Sec. 451.255. **EMERGENCY SUSPENSION.** Requires the Advisory Board of Athletic Trainers (board) or a three-member committee of board members designated by the board to temporarily suspend the license of a license holder if the board or committee determines from evidence or information presented to it that continued practice by the license holder would constitute a continuing and imminent threat to the public welfare. Authorizes the license to

be suspended under this section without notice or hearing under certain circumstances. Requires SOAH to hold a preliminary hearing not later than the 14th day after the date of the temporary suspension to determine if there is probable cause to believe that a continuing and imminent threat to the public welfare still exists. Requires a final hearing on the matter to be held not later than the 61st day after the date of the temporary suspension.

SECTION 9. Amends Chapter 455F, Occupations Code, by adding Section 455.254, as follows:

Sec. 455.254. EMERGENCY SUSPENSION. Requires the Texas Department of Health (TDH) to temporarily suspend the certificate of registration of a certificate holder if TDH determines from evidence or information presented to it that continued practice by the certificate holder would constitute a continuing and imminent threat to the public welfare. Authorizes the certificate of registration to be suspended under this section without notice or hearing under certain circumstances. Requires SOAH to hold a preliminary hearing not later than the 14th day after the date of the temporary suspension to determine if there is probable cause to believe that a continuing and imminent threat to the public welfare still exists. Requires a final hearing on the matter to be held not later than the 61st day after the date of the temporary suspension.

SECTION 10. Amends Chapter 502H, Occupations Code, by adding Section 502.356, as follows:

Sec. 502.356. EMERGENCY SUSPENSION. Requires the Texas State Board of Examiners of Marriage and Family Therapists (board) or a three-member committee of board members designated by the board to temporarily suspend the license of a license holder if the board or committee determines from evidence or information presented to it that continued practice by the license holder would constitute a continuing and imminent threat to the public welfare. Authorizes the license to be suspended under this section without notice or hearing under certain circumstances. Requires SOAH to hold a preliminary hearing not later than the 14th day after the date of the temporary suspension to determine if there is probable cause to believe that a continuing and imminent threat to the public welfare still exists. Requires a final hearing on the matter to be held not later than the 61st day after the date of the temporary suspension.

SECTION 11. Amends Chapter 503, Occupations Code, by adding Subchapter K, as follows:

SUBCHAPTER K. ADMINISTRATIVE PENALTY

Sec. 503.501. IMPOSITION OF ADMINISTRATIVE PENALTY. Authorizes the Texas State Board of Examiners of Professional Counselors (board) to impose an administrative penalty on a person licensed under this chapter who violates this chapter or a rule or order adopted under this chapter.

Sec. 503.502. AMOUNT OF ADMINISTRATIVE PENALTY. Prohibits the amount of the administrative penalty from being less than \$50 or more than \$500 for each violation. Provides that each day a violation continues or occurs is a separate violation for the purpose of imposing a penalty. Requires the amount to be based on certain factors.

Sec. 503.503. REPORT AND NOTICE OF VIOLATION AND PENALTY. Authorizes the commissioner of public health (commissioner), on determination that a violation has occurred, to issue a report to the board stating certain information. Requires the commissioner, within 14 days after the date the report is issued, to give written notice of the report to the person. Provides that the notice must include certain information.

Sec. 503.504. PENALTY TO BE PAID OR HEARING REQUESTED. Authorizes the person, within 10 days after the person receives the notice, to take certain actions. Requires the board by order, if the person accepts the determination and recommended penalty of the commissioner, to approve the determination and impose the recommended penalty.

Sec. 503.505. HEARING. Requires the commissioner, if the person requests a hearing or fails to respond in a timely manner to the notice, to set a hearing and give written notice of the hearing to the person. Requires an administrative law judge of SOAH to hold the

hearing. Requires the administrative law judge to make findings of fact and conclusions of law and promptly issue to the board a proposal for a decision about the occurrence of the violation and the amount of a proposed administrative penalty.

Sec. 503.506. **DECISION BY BOARD.** Authorizes the board by order, based on the findings of fact, conclusions of law, and proposal for decision, to determine that a violation occurred and impose an administrative penalty or that a violation did not occur. Requires the notice of the board's order given to the person to include a statement of the right of the person to judicial review of the order.

Sec. 503.507. **OPTIONS FOLLOWING DECISION: PAY OR APPEAL.** Requires the person, within 30 days after the date the board's order becomes final, to take certain actions. Authorizes a person who files a petition for judicial review, within this 30-day period, to take certain actions. Authorizes the commissioner, if the commissioner receives a copy of a certain affidavit under this section, to file a contest to the affidavit with the court within five days after the date the copy is received. Requires the court to hold a hearing on the facts alleged in the affidavit as soon as practicable and to stay the enforcement of the penalty on finding that the alleged facts are true. Provides that the person who files the affidavit has the burden of proving that the person is financially unable to pay the penalty and to give a supersedeas bond.

Sec. 503.508. **COLLECTION OF PENALTY.** Authorizes the administrative penalty to be collected if the person does not pay the penalty and the enforcement of the penalty is not stayed. Authorizes the attorney general to sue to collect the penalty.

Sec. 503.509. **DETERMINATION BY COURT.** Authorizes the court, if the court sustains the determination that a violation occurred, to uphold or reduce the amount of the administrative penalty and order the person to pay the full or reduced amount of the penalty. Requires the court, if the court does not sustain the finding that a violation occurred, to order that the penalty is not owed.

Sec. 503.510. **REMITTANCE OF PENALTY AND INTEREST.** Requires the court, if the person paid the administrative penalty and if the amount of the penalty is reduced or the penalty is not upheld by the court, to order, when the court's judgment becomes final, that the appropriate amount plus accrued interest be remitted to the person. Sets forth the rate at which interest accrues. Requires the interest to be paid for a certain period. Requires the court, if the person gave a supersedeas bond and the penalty is not upheld in court, to order, when the court's judgment becomes final, the release of the bond. Requires the court, if the person gave a supersedeas bond and the amount of the penalty is reduced, to order the release of the bond after the person pays the reduced amount.

Sec. 503.511. **ADMINISTRATIVE PROCEDURE.** Provides that a proceeding under this section is a contested case under Chapter 2001, Government Code.

SECTION 12. Amends Chapter 505J, Occupations Code, by adding Section 505.507, as follows:

Sec. 505.507. **CRIMINAL PENALTY.** Provides that a person required to hold a license under this chapter commits an offense if the person knowingly acts as a social worker without holding a license issued under this chapter. Provides that an offense under this section is a Class B misdemeanor.

SECTION 13. Amends Chapter 601G, Occupations Code, by adding Section 601.306, as follows:

Sec. 601.306. **EMERGENCY SUSPENSION.** Requires the Texas Department of Health (TDH) to temporarily suspend the certificate of a certificate holder if TDH determines from evidence or information presented to it that continued practice by the certificate holder would constitute a continuing and imminent threat to the public welfare. Authorizes the certificate to be suspended under this section without notice or hearing under certain circumstances. Requires SOAH to hold a preliminary hearing not later than the 14th day after the date of the temporary suspension to determine if there is probable cause to believe that a continuing and imminent threat to the public welfare still exists. Requires a final

hearing on the matter to be held not later than the 61st day after the date of the temporary suspension.

SECTION 14. Amends Chapter 602F, Occupations Code, by adding Section 602.254, as follows:

Sec. 602.254. EMERGENCY SUSPENSION. Requires the Texas Board of Licensure for Professional Medical Physicists in the Texas Department of Health (board) or a three-member committee of board members designated by the board to temporarily suspend the license of a license holder if the board or committee determines from evidence or information presented to it that continued practice by the license holder would constitute a continuing and imminent threat to the public welfare. Authorizes the license to be suspended under this section without notice or hearing under certain circumstances. Requires SOAH to hold a preliminary hearing not later than the 14th day after the date of the temporary suspension to determine if there is probable cause to believe that a continuing and imminent threat to the public welfare still exists. Requires a final hearing on the matter to be held not later than the 61st day after the date of the temporary suspension.

SECTION 15. Amends Chapter 602G, Occupations Code, by adding Section 602.3015, as follows:

Sec. 602.3015. CIVIL PENALTY. Provides that a person who violates this chapter or a rule or order adopted by the Texas Board of Licensure for Professional Medical Physicists in the Texas Department of Health (board) under this chapter is liable for a civil penalty not to exceed \$1,000 a day. Requires the attorney general, at the request of the board or the Texas Department of Health, to bring an action to recover a civil penalty authorized under this section.

SECTION 16. Amends Section 602.302, Occupations Code, to provide that a person commits an offense if the person commits certain actions. Increases the classification of an offense under this section from a Class B to a Class A misdemeanor.

SECTION 17. Amends Chapter 603I, Occupations Code, by adding Section 603.408, as follows:

Sec. 603.408. EMERGENCY SUSPENSION. Requires the Texas Board of Examiners of Perfusionists (board) or a three-member committee of board members designated by the board to temporarily suspend the license of a license holder if the board or committee determines from evidence or information presented to it that continued practice by the license holder would constitute a continuing and imminent threat to the public welfare. Authorizes the license to be suspended under this section without notice or hearing under certain circumstances. Requires SOAH to hold a preliminary hearing not later than the 14th day after the date of the temporary suspension to determine if there is probable cause to believe that a continuing and imminent threat to the public welfare still exists. Requires a final hearing on the matter to be held not later than the 61st day after the date of the temporary suspension.

SECTION 18. Amends Chapter 603J, Occupations Code, by adding Section 603.4515, as follows:

Sec. 603.4515. CIVIL PENALTY. Provides that a person who violates this chapter or a rule or order adopted by the Texas Board of Examiners of Perfusionists (board) under this chapter is liable for a civil penalty not to exceed \$1,000 a day. Requires the attorney general, at the request of the board or the Texas Department of Health, to bring an action to recover a civil penalty authorized under this section.

SECTION 19. Amends Chapter 603, Occupations Code, by adding Subchapter K, as follows:

SUBCHAPTER K. ADMINISTRATIVE PENALTY

Sec. 603.501. IMPOSITION OF ADMINISTRATIVE PENALTY. Authorizes the Texas State Board of Examiners of Perfusionists (board) to impose an administrative penalty on a person licensed under this chapter who violates this chapter or a rule or order adopted under this chapter.

Sec. 603.502. AMOUNT OF ADMINISTRATIVE PENALTY. Prohibits the amount of the administrative penalty from being less than \$50 or more than \$500 for each violation. Provides that each day a violation continues or occurs is a separate violation for the purpose of imposing a penalty. Requires the amount to be based on certain factors.

Sec. 603.503. REPORT AND NOTICE OF VIOLATION AND PENALTY. Authorizes the commissioner of public health (commissioner), on determination that a violation has occurred, to issue a report to the board stating certain information. Requires the commissioner, within 14 days after the date the report is issued, to give written notice of the report to the person. Provides that the notice must include certain information.

Sec. 603.504. PENALTY TO BE PAID OR HEARING REQUESTED. Authorizes the person, within 10 days after the person receives the notice, to take certain actions. Requires the board by order, if the person accepts the determination and recommended penalty of the commissioner, to approve the determination and impose the recommended penalty.

Sec. 603.505. HEARING. Requires the commissioner, if the person requests a hearing or fails to respond in a timely manner to the notice, to set a hearing and give written notice of the hearing to the person. Requires an administrative law judge of SOAH to hold the hearing. Requires the administrative law judge to make findings of fact and conclusions of law and promptly issue to the board a proposal for a decision about the occurrence of the violation and the amount of a proposed administrative penalty.

Sec. 603.506. DECISION BY BOARD. Authorizes the board by order, based on the findings of fact, conclusions of law, and proposal for decision, to determine that a violation occurred and impose an administrative penalty or that a violation did not occur. Requires the notice of the board's order given to the person to include a statement of the right of the person to judicial review of the order.

Sec. 603.507. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. Requires the person, within 30 days after the date the board's order becomes final, to take certain actions. Authorizes a person who files a petition for judicial review, within this 30-day period, to take certain actions. Authorizes the commissioner, if the commissioner receives a copy of a certain affidavit under this section, to file a contest to the affidavit with the court within five days after the date the copy is received. Requires the court to hold a hearing on the facts alleged in the affidavit as soon as practicable and to stay the enforcement of the penalty on finding that the alleged facts are true. Provides that the person who files the affidavit has the burden of proving that the person is financially unable to pay the penalty and to give a supersedeas bond.

Sec. 603.508. COLLECTION OF PENALTY. Authorizes the administrative penalty to be collected if the person does not pay the penalty and the enforcement of the penalty is not stayed. Authorizes the attorney general to sue to collect the penalty.

Sec. 603.509. DETERMINATION BY COURT. Authorizes the court, if the court sustains the determination that a violation occurred, to uphold or reduce the amount of the administrative penalty and order the person to pay the full or reduced amount of the penalty. Requires the court, if the court does not sustain the finding that a violation occurred, to order that the penalty is not owed.

Sec. 603.510. REMITTANCE OF PENALTY AND INTEREST. Requires the court, if the person paid the administrative penalty and if the amount of the penalty is reduced or the penalty is not upheld by the court, to order, when the court's judgment becomes final, that the appropriate amount plus accrued interest be remitted to the person. Sets forth the rate at which interest accrues. Requires the interest to be paid for a certain period. Requires the court, if the person gave a supersedeas bond and the penalty is not upheld in court, to order, when the court's judgment becomes final, the release of the bond. Requires the court, if the person gave a supersedeas bond and the amount of the penalty is reduced, to order the release of the bond after the person pays the reduced amount.

Sec. 603.511. ADMINISTRATIVE PROCEDURE. Provides that a proceeding under this

section is a contested case under Chapter 2001, Government Code.

SECTION 20. Amends Chapter 605H, Occupations Code, by adding Section 605.3535, as follows:

Sec. 605.3535. EMERGENCY SUSPENSION. Requires the Texas Board of Orthotics and Prosthetics (board) or a three-member committee of board members designated by the board to temporarily suspend the license of a license holder if the board or committee determines from evidence or information presented to it that continued practice by the license holder would constitute a continuing and imminent threat to the public welfare. Authorizes the license to be suspended under this section without notice or hearing under certain circumstances. Requires SOAH to hold a preliminary hearing not later than the 14th day after the date of the temporary suspension to determine if there is probable cause to believe that a continuing and imminent threat to the public welfare still exists. Requires a final hearing on the matter to be held not later than the 61st day after the date of the temporary suspension.

SECTION 21. Amends Chapter 605H, Occupations Code, by adding Section 605.356, as follows:

Sec. 605.356. CRIMINAL PENALTY. Provides that a person required to hold a license under this chapter commits an offense if the person knowingly practices, attempts to practice, or offers to practice orthotics or prosthetics without holding a license issued under this chapter. Provides that an offense under this section is a Class B misdemeanor.

SECTION 22. Amends Chapter 605, Occupations Code, by adding Subchapter I, as follows:

SUBCHAPTER I. ADMINISTRATIVE PENALTY

Sec. 605.401. IMPOSITION OF ADMINISTRATIVE PENALTY. Authorizes the Texas State Board of Orthotics and Prosthetics (board) to impose an administrative penalty on a person licensed under this chapter who violates this chapter or a rule or order adopted under this chapter.

Sec. 605.402. AMOUNT OF ADMINISTRATIVE PENALTY. Prohibits the amount of the administrative penalty from being less than \$50 or more than \$500 for each violation. Provides that each day a violation continues or occurs is a separate violation for the purpose of imposing a penalty. Requires the amount to be based on certain factors.

Sec. 605.403. REPORT AND NOTICE OF VIOLATION AND PENALTY. Authorizes the executive director, on determination that a violation has occurred, to issue a report to the board stating certain information. Requires the executive director, within 14 days after the date the report is issued, to give written notice of the report to the person. Provides that the notice must include certain information.

Sec. 605.404. PENALTY TO BE PAID OR HEARING REQUESTED. Authorizes the person, within 10 days after the person receives the notice, to take certain actions. Requires the board by order, if the person accepts the determination and recommended penalty of the executive director, to approve the determination and impose the recommended penalty.

Sec. 605.405. HEARING. Requires the executive director, if the person requests a hearing or fails to respond in a timely manner to the notice, to set a hearing and give written notice of the hearing to the person. Requires an administrative law judge of SOAH to hold the hearing. Requires the administrative law judge to make findings of fact and conclusions of law and promptly issue to the board a proposal for a decision about the occurrence of the violation and the amount of a proposed administrative penalty.

Sec. 605.406. DECISION BY BOARD. Authorizes the board by order, based on the findings of fact, conclusions of law, and proposal for decision, to determine that a violation occurred and impose an administrative penalty or that a violation did not occur. Requires the notice of the board's order given to the person to include a statement of the right of the person to judicial review of the order.

Sec. 605.407. **OPTIONS FOLLOWING DECISION: PAY OR APPEAL.** Requires the person, within 30 days after the date the board's order becomes final, to take certain actions. Authorizes a person who files a petition for judicial review, within this 30-day period, to take certain actions. Authorizes the executive director, if the executive director receives a copy of a certain affidavit under this section, to file a contest to the affidavit with the court within five days after the date the copy is received. Requires the court to hold a hearing on the facts alleged in the affidavit as soon as practicable and to stay the enforcement of the penalty on finding that the alleged facts are true. Provides that the person who files the affidavit has the burden of proving that the person is financially unable to pay the penalty and to give a supersedeas bond.

Sec. 605.408. **COLLECTION OF PENALTY.** Authorizes the administrative penalty to be collected if the person does not pay the penalty and the enforcement of the penalty is not stayed. Authorizes the attorney general to sue to collect the penalty.

Sec. 605.409. **DETERMINATION BY COURT.** Authorizes the court, if the court sustains the determination that a violation occurred, to uphold or reduce the amount of the administrative penalty and order the person to pay the full or reduced amount of the penalty. Requires the court, if the court does not sustain the finding that a violation occurred, to order that the penalty is not owed.

Sec. 605.410. **REMITTANCE OF PENALTY AND INTEREST.** Requires the court, if the person paid the administrative penalty and if the amount of the penalty is reduced or the penalty is not upheld by the court, to order, when the court's judgment becomes final, that the appropriate amount plus accrued interest be remitted to the person. Sets forth the rate at which interest accrues. Requires the interest to be paid for a certain period. Requires the court, if the person gave a supersedeas bond and the penalty is not upheld in court, to order, when the court's judgment becomes final, the release of the bond. Requires the court, if the person gave a supersedeas bond and the amount of the penalty is reduced, to order the release of the bond after the person pays the reduced amount.

Sec. 605.411. **ADMINISTRATIVE PROCEDURE.** Provides that a proceeding under this section is a contested case under Chapter 2001, Government Code.

SECTION 23. Amends Chapter 701I, Occupations Code, by adding Section 701.408, as follows:

Sec. 701.408. **EMERGENCY SUSPENSION.** Requires the Texas State Board of Examiners of Dietitians (board) or a three-member committee of board members designated by the board to temporarily suspend the license of a license holder if the board or committee determines from evidence or information presented to it that continued practice by the license holder would constitute a continuing and imminent threat to the public welfare. Authorizes the license to be suspended under this section without notice or hearing under certain circumstances. Requires SOAH to hold a preliminary hearing not later than the 14th day after the date of the temporary suspension to determine if there is probable cause to believe that a continuing and imminent threat to the public welfare still exists. Requires a final hearing on the matter to be held not later than the 61st day after the date of the temporary suspension.

SECTION 24. Amends Chapter 701, Occupations Code, by adding Subchapter K, as follows:

SUBCHAPTER K. ADMINISTRATIVE PENALTY

Sec. 701.501. **IMPOSITION OF ADMINISTRATIVE PENALTY.** Authorizes the Texas State Board of Examiners of Dietitians (board) to impose an administrative penalty on a person licensed under this chapter who violates this chapter or a rule or order adopted under this chapter.

Sec. 701.502. **AMOUNT OF ADMINISTRATIVE PENALTY.** Prohibits the amount of the administrative penalty from being less than \$50 or more than \$500 for each violation. Provides that each day a violation continues or occurs is a separate violation for the purpose of imposing a penalty. Requires the amount to be based on certain factors.

Sec. 701.503. REPORT AND NOTICE OF VIOLATION AND PENALTY. Authorizes the commissioner of public health (commissioner), on determination that a violation has occurred, to issue a report to the board stating certain information. Requires the commissioner, within 14 days after the date the report is issued, to give written notice of the report to the person. Provides that the notice must include certain information.

Sec. 701.504. PENALTY TO BE PAID OR HEARING REQUESTED. Authorizes the person, within 10 days after the person receives the notice, to take certain actions. Requires the board by order, if the person accepts the determination and recommended penalty of the commissioner, to approve the determination and impose the recommended penalty.

Sec. 701.505. HEARING. Requires the commissioner, if the person requests a hearing or fails to respond in a timely manner to the notice, to set a hearing and give written notice of the hearing to the person. Requires an administrative law judge of SOAH to hold the hearing. Requires the administrative law judge to make findings of fact and conclusions of law and promptly issue to the board a proposal for a decision about the occurrence of the violation and the amount of a proposed administrative penalty.

Sec. 701.506. DECISION BY DIETICIANS BOARD. Authorizes the board by order, based on the findings of fact, conclusions of law, and proposal for decision, to determine that a violation occurred and impose an administrative penalty or that a violation did not occur. Requires the notice of the board's order given to the person to include a statement of the right of the person to judicial review of the order.

Sec. 701.507. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. Requires the person, within 30 days after the date the board's order becomes final, to take certain actions. Authorizes a person who files a petition for judicial review, within this 30-day period, to take certain actions. Authorizes the commissioner, if the commissioner receives a copy of a certain affidavit under this section, to file a contest to the affidavit with the court within five days after the date the copy is received. Requires the court to hold a hearing on the facts alleged in the affidavit as soon as practicable and to stay the enforcement of the penalty on finding that the alleged facts are true. Provides that the person who files the affidavit has the burden of proving that the person is financially unable to pay the penalty and to give a supersedeas bond.

Sec. 701.508. COLLECTION OF PENALTY. Authorizes the administrative penalty to be collected if the person does not pay the penalty and the enforcement of the penalty is not stayed. Authorizes the attorney general to sue to collect the penalty.

Sec. 701.509. DETERMINATION BY COURT. Authorizes the court, if the court sustains the determination that a violation occurred, to uphold or reduce the amount of the administrative penalty and order the person to pay the full or reduced amount of the penalty. Requires the court, if the court does not sustain the finding that a violation occurred, to order that the penalty is not owed.

Sec. 701.510. REMITTANCE OF PENALTY AND INTEREST. Requires the court, if the person paid the administrative penalty and if the amount of the penalty is reduced or the penalty is not upheld by the court, to order, when the court's judgment becomes final, that the appropriate amount plus accrued interest be remitted to the person. Sets forth the rate at which interest accrues. Requires the interest to be paid for a certain period. Requires the court, if the person gave a supersedeas bond and the penalty is not upheld in court, to order, when the court's judgment becomes final, the release of the bond. Requires the court, if the person gave a supersedeas bond and the amount of the penalty is reduced, to order the release of the bond after the person pays the reduced amount.

Sec. 701.511. ADMINISTRATIVE PROCEDURE. Provides that a proceeding under this section is a contested case under Chapter 2001, Government Code.

SECTION 25. Amends Chapter 462, Acts of the 68th Legislature, Regular Session, 1983 (Article 4413(51), V.T.C.S.) by adding Sections 13D and 13E, as follows:

Sec. 13D. EMERGENCY SUSPENSION. Requires the Council on Sex Offender Treatment (council) or a three-member committee of council members designated by the council to temporarily suspend the registration of a registration holder if the council or committee determines from evidence or information presented to it that continued practice by the registration holder would constitute a continuing and imminent threat to the public welfare. Authorizes the registration to be suspended under this section without notice or hearing under certain circumstances. Requires SOAH to hold a preliminary hearing not later than the 14th day after the date of the temporary suspension to determine if there is probable cause to believe that a continuing and imminent threat to the public welfare still exists. Requires a final hearing on the matter to be held not later than the 61st day after the date of the temporary suspension.

Sec. 13E. ADMINISTRATIVE PENALTY. (a) Authorizes the council to impose an administrative penalty on a person licensed under this Act who violates this Act or a rule or order adopted under this Act.

- (b) Prohibits the amount of the administrative penalty from being less than \$50 or more than \$500 for each violation. Provides that each day a violation continues or occurs is a separate violation for the purpose of imposing a penalty. Requires the amount to be based on certain factors.
- (c) Authorizes the executive director, on determination that a violation has occurred, to issue a report to the council stating certain information.
- (d) Requires the executive director, within 14 days after the date the report is issued, to give written notice of the report to the person. Provides that the notice must include certain information.
- (e) Authorizes the person, within 10 days after the person receives the notice, to take certain actions.
- (f) Requires the council by order, if the person accepts the determination and recommended penalty of the executive director, to approve the determination and impose the recommended penalty.
- (g) Requires the executive director, if the person requests a hearing or fails to respond in a timely manner to the notice, to set a hearing and give written notice of the hearing to the person.
- (h) Requires an administrative law judge of SOAH to hold the hearing.
- (i) Requires the administrative law judge to make findings of fact and conclusions of law and promptly issue to the council a proposal for a decision about the occurrence of the violation and the amount of a proposed administrative penalty.
- (j) Authorizes the council by order, based on the findings of fact, conclusions of law, and proposal for decision, to determine that a violation occurred and impose an administrative penalty or that a violation did not occur.
- (k) Requires the notice of the council's order given to the person to include a statement of the right of the person to judicial review of the order.
- (l) Requires the person, within 30 days after the date the board's order becomes final, to take certain actions.
- (m) Authorizes a person who files a petition for judicial review, within this 30-day period, to take certain actions.
- (n) Authorizes the executive director, if the executive director receives a copy of a certain affidavit under this section, to file a contest to the affidavit with the court within five days after the date the copy is received.

- (o) Requires the court to hold a hearing on the facts alleged in the affidavit as soon as practicable and to stay the enforcement of the penalty on finding that the alleged facts are true. Provides that the person who files the affidavit has the burden of proving that the person is financially unable to pay the penalty and to give a supersedeas bond.
- (p) Authorizes the administrative penalty to be collected if the person does not pay the penalty and the enforcement of the penalty is not stayed. Authorizes the attorney general to sue to collect the penalty.
- (q) Authorizes the court, if the court sustains the determination that a violation occurred, to uphold or reduce the amount of the administrative penalty and order the person to pay the full or reduced amount of the penalty. Requires the court, if the court does not sustain the finding that a violation occurred, to order that the penalty is not owed.
- (r) Requires the court, if the person paid the administrative penalty and if the amount of the penalty is reduced or the penalty is not upheld by the court, to order, when the court's judgment becomes final, that the appropriate amount plus accrued interest be remitted to the person. Sets forth the rate at which interest accrues. Requires the interest to be paid for a certain period.
- (s) Requires the court, if the person gave a supersedeas bond and the penalty is not upheld in court, to order, when the court's judgment becomes final, the release of the bond. Requires the court, if the person gave a supersedeas bond and the amount of the penalty is reduced, to order the release of the bond after the person pays the reduced amount.
- (t) Provides that a proceeding under this section is a contested case under Chapter 2001, Government Code.

SECTION 26. (a) Repealer: Sections 50.0225(h) and (i), Human Resources Code; Sections 11B(h) and (i), Article 4512c-1, V.T.C.S.; Sections 5B(h) and (i), Article 4512d, V.T.C.S.; Sections 16D(h) and (i), Article 4512g, V.T.C.S.; Sections 16C(h) and (i), Article 4512h, V.T.C.S.; Sections 24A(h) and (i), Article 4512j, V.T.C.S.; Sections 11B(h) and (i), Article 4512n, V.T.C.S.; Sections 19A(h) and (i), Article 4529e, Revised Statutes; Sections 1.12C(h) and (i), Article 4566-1.12C, V.T.C.S.; Sections 6A(h) and (i), Article 8920, Revised Statutes.

(b) Effective date of this section: September 1, 2002. Makes application of this section contingent upon the Act of the 77th Legislature, Regular Session, 2001, relating to nonsubstantive additions to and corrections in enacted codes not taking effect.

SECTION 27. Repealer: Various sections of the Occupations Code, as added by the Act of the 77th Legislature, Regular Session, 2001, relating to the nonsubstantive additions to and corrections in enacted codes.

SECTION 28. Repealer: Sections 8C(h) and (i), Article 4413(51), V.T.C.S.

SECTION 26. (a) Effective date: September 1, 2001.

(b) Makes application of the change in law made by this Act to Section 602.302, Occupations Code, prospective.

(c) Makes application of the change in law made by this Act relating to imposition of an administrative or civil penalty prospective.